

Update: Criminal Procedure Monograph 7—Probation Revocation (Third Edition)

Part A—Commentary

7.29 Alternatives Following a Finding of Probation Violation

Insert the following text after the last full paragraph on page 27:

See *People v Church*, ___ Mich ___ (2006), a Michigan Supreme Court order vacating the defendant's sentences, reiterating the Court's holding in *People v Hendrick*, 472 Mich 555, 560 (2005), and remanding the case to the trial court for resentencing. The order, in part, stated:

“The sentencing guidelines apply to sentences imposed after probation revocation. *People v Hendrick*, 472 Mich 555, 560 (2005). Defendant's minimum sentencing guidelines range is 7 to 23 months. The trial court did not articulate substantial and compelling reasons for imposing a minimum sentence of 40 months. On remand, the trial court shall sentence defendant within the appropriate sentencing guidelines range, or articulate on the record a substantial and compelling reason for departing from the sentencing guidelines range in accordance with *People v Babcock*, 469 Mich 247 (2003). Under *Hendrick*, *supra* at 564, the acts giving rise to the probation violation may provide a substantial and compelling reason to depart.” *Church*, *supra* at ___.

Part A—Commentary

7.29 Alternatives Following a Finding of Probation Violation

Insert the following text on page 28 before the paragraph beginning, “Because the rule in *People v Hendrick* . . .”:

See also *People v Church*, ___ Mich ___ (2006), a Michigan Supreme Court order reiterating its holding in *People v Hendrick*, 472 Mich 555, 560 (2005), that a defendant’s conduct following his or her initial order of probation (including conduct that led to probation revocation) may constitute a substantial and compelling reason to support a trial court’s departure from the sentence range indicated under the guidelines. In the *Church* order, the Court noted that “[u]nder *Hendrick*, *supra* at 564, the acts giving rise to the probation violation may provide a substantial and compelling reason to depart.” *Church*, *supra* at ___.

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7.35 Granting Credit for Time Served

Insert the following text after the sentence at the top of page 35:

See also *People v Stead*, ___ Mich App ___, ___ (2006). A defendant who spends time in jail for an offense committed while the defendant was on parole is a parole detainee for whom bond is not considered. A parole detainee is entitled to credit against the sentence from which he or she was paroled for any time spent in jail awaiting disposition of the new offense.